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Utah Supreme Court

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BRIEF

870002

IN THE SUPREME COURT OF THE STATE OF UTAH

IN THE MATTER OF THE GENERAL)
DETERMINATION OF THE RIGHTS)
TO THE USE OF ALL THE WATER)
BOTH SURFACE AND UNDERGROUND,)
WITHIN THE DRAINAGE AREA OF)
THE BEAR RIVER AND ITS)
TRIBUTARIES IN UTAH,)

IN RE: PROTESTS OF COLLEGE)
IRRIGATION COMPANY, a Corp.,)
SPRING CREEK CACHE IRRIGATION)
COMPANY, a Corp., and CLEAR)
CREEK WATER USERS,)

Appellants,)

No. 870002

LOGAN RIVER & BLACKSMITH FORK)
IRRIGATION COMPANY, a Corp.,)

Respondent,)

REPLY BRIEF OF APPELLANTS

Appeal from a judgment and decree of the
District Court of the First Judicial District
in and for Cache County, State of Utah

VeNoy Christoffersen, District Judge

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FILED
SEP 14 1987

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IRRIGATION COMPANY, a Corp.,)

Respondent,)

REPLY BRIEF OF APPELLANTS

PRELIMINARY STATEMENT

The parties will be referred to in this brief by the same abbreviated designations as indicated on page 1 of the brief of appellants and the references to the record will be the same as there indicated.

NEW MATTERS TO BE ARGUED

Pursuant to Rule 24(c) of the Rules of the Utah Supreme Court, this reply brief will be limited to answering new matters set forth in the respondent's brief. The new matters are as follows:

1. The respondent's contention that the long delay between the trial and the court's decision was not prejudicial to the appellants.

2. The respondent's first time argument that the dams in the Blacksmith Fork River were not built to appropriate a water right, but to divert the water under the appellants' water rights into the appellants' irrigation system.

3. The respondent's contention that the trial court already had before it all evidence which the appellants proposed to introduce if the trial had been reopened.

The new matters listed above will be argued under separate headings.

ARGUMENT

1.

THE LONG DELAY BETWEEN THE TRIAL AND THE DECISION WAS PREJUDICIAL TO THE APPELLANTS

The respondents state on page 4 of their brief:

"....The issue thereby joined was tried to the Court, the Honorable Venoy Christofferson presiding, on April 22, 1980. At the close of the trial, the Court requested briefs from each of the parties. It was at this time that the State of Utah began a "wet cycle" when farmers had all the water they wanted and more. The case fell into inactivity for want of pressure for a decision, and it was not until September of 1986 that the matter was fully before the Trial Court, and on October 2, 1986, Judge Christoffersen made a Memorandum Decision...."

As indicated in the above quotation, this case was tried on April 22, 1980, and was decided on October 2, 1986.

The attempt to blame the six-year delay between the trial and the decision in the case on the "wet cycle" in the State of Utah is so obviously wrong that it does not merit any detailed argument. Suffice it to say that the respondent in 1980 did not have the infinite wisdom necessary to forecast the weather for the next six years. The fact is that the trial court gave the respondents 20 days in 1980 to file an answering brief (TR. 134) The brief (R. 36), dated July 15, 1986, was not filed until October 3, 1986. The 1986 brief raised issues about need for water by Blacksmith Fork during the adverse use period which should have been raised in 1980, and the appellants would have had an opportunity to respond.

On page 28 of the respondent's brief, it is asserted that the fact of the six-year delay should have helped the appellants in getting the required information on stream flows and not made it more difficult. The respondents overlook the fact that the issue which necessitated getting the daily flow records was not raised until its brief was filed in 1986. The appellants could hardly have been expected to use the six year period for preparing evidence on an issue which had not yet been raised!

In their reply trial brief, dated August 22, 1986, the appellants, after citing cases to the effect that after an adverse use claimant has shown open, visible, continuous and unmolested

use of water for the statutory period had established a prima facie case, and the burden of showing that such user was not a substantial interference with the rights of others shifts to the party opposing the claim of adverse use, stated that there is attached monthly and yearly mean discharge records of the Logan River which would show generally that the flow is greatly reduced in July, August, and September of each year.

A letter was sent to the trial judge, dated October 1, 1986, notifying him that the daily U.S.G.S. flow records had finally been found and that an engineer had been employed to explain them. The letter, by a stamp, shows that it was received the same date, October 2, 1986, as that of the Memorandum Decision which denied relief to the appellants (R. 69). The judge did not take judicial notice of the daily discharge records, because he had never seen them.

For the reasons stated above, the argument of respondent that the appellants were not prejudiced by the six year's delay is clearly without merit.

2.

THE PURPOSE OF THE TWO DAMS IN BLACKSMITH FORK RIVER
TO DIVERT, AND NOT TO APPROPRIATE WATER
HAS NO LEGAL SIGNIFICANCE

The trial court found that the two dams in the Blacksmith Fork River were not "....built to appropriate, but to divert the water. See brief of respondents, page 22. (Finding No. 9, R. 89) Finding of Fact No. 9 states:

"Finding No. 9. That the dams built across the Blacksmith Fork River by Protestants were not built to appropriate a water right of the Logan River & Blacksmith Fork Irrigation Company but to divert the water under Protestants' water right into the Protestants' irrigation system."

Based on this finding, the respondent argues:

"This evidence clearly shows that the water diverted from Blacksmith Fork River by both College and Spring Creek can and does divert back into Logan River and sustains the Trial Court's findings that the Appellants have failed to show that water they diverted from the Blacksmith Fork River was used by Appellants adversely to Blacksmith Fork and not returned to the River for use by Blacksmith Fork further down stream. In fact, the evidence shows affirmatively that the water diverted by College and Spring Creek was returned to the channel of the Blacksmith Fork River below the Spring Creek point of diversion. It is clear and Judge Christoffersen found that the dams of College and Spring Creek were built in low water years when, but for the dams, the flow of Blacksmith Fork River was so low the water to which College and Spring Creek were entitled could not have been diverted from the Blacksmith Fork River into the College and Spring Creek Cache Irrigation Co. water systems. In other words, the dams were not built to appropriate, but to divert the water. (See Memorandum Decision and R. bottom of page 67 and top of page 68)"

Aside from the misunderstanding of a physical fact that water from College cannot be diverted back into Blacksmith Fork River (Ex. 1), the underlined material in the above quotation does not tend to disprove the claims of College and Spring Creek that they diverted the low flow of the river into their irrigation systems continuously for more than seven years prior to 1939 and had thereby, by adverse use, obtained the legal right to continue to so divert the water.

The misunderstanding of the physical fact mentioned above is clearly shown on Appendix "A" attached to the brief of appellants, page 29, which the trial judge did not have before him when he decided the case. The map, Exhibit 1, was lost after the trial and was not found until several months after the case was decided. It will be noted that the College Irrigation Co. ditch flows westerly from the diversion point, and there is no way the water could be released uphill and back into the river. See also the testimony of Harvard Hansen and Roy Olsen (Tr. 20, 71, 72)

3.

THE TRIAL COURT DID NOT HAVE BEFORE IT
ALL EVIDENCE WHICH THE APPELLANTS PROPOSED
TO INTRODUCE IF THE TRIAL HAD BEEN REOPENED

A brief explanatory statement is necessary to an understanding of appellants' argument under this heading. Blacksmith Fork's priority is 1877 and its diversion point is below the confluence of the Logan and Blacksmith Fork Rivers. (See map, Exhibit 1, Appendix A, Appellants' brief.) Blacksmith Fork is entitled to take water from the Blacksmith Fork River as against other Blacksmith Fork River water users who have priorities later than 1877, only if its water needs cannot be supplied by Logan River. The Kimball decree, of which the Court took judicial notice (Tr. 17), determines the water rights on both the Logan River and its tributary the Blacksmith Fork River. The Kimball decree provides on page 36:

"When the total flow of Logan River, which shall be the sum of the flow as measured at the gauging station on Logan River opposite Utah Power & Light Company's plant, plus the flow in said Power Company's tailrace, plus the quantity being simultaneously diverted by the Logan, Hyde Park & Smithfield Canal, Thomas Smart Canal and Logan City, shall be less than is required to satisfy the rights of Logan River appropriators hereinbefore specified, the water shall be pro-rated and distributed among these parties according to the following schedule 'A'."

Pages 27 to 36 of the Kimball decree referred to as the "Logan River appropriators hereinbefore specified" are attached as Appendix "A".

The water rights required to be satisfied as provided above total 563.06 cfs, all of which have a priority of 1860. Schedule "A", a copy of which is attached as Appendix "B", shows the water distribution, as required by the decree, when the total flow, as defined in the above quotation, falls to 400 cfs and at stages of flow down to 120 cfs. The flow of the river for distribution of water purposes must be the daily flow. For example, it will be noted that Logan, Hyde Park, and Smithfield Canal Co., has a decreed water right with a priority of 1860 to a flow of 123.2 cfs. According to Schedule "A", when the flow falls to 400 cfs, the right is cut to 103.2 cfs.

In response to the appellants' argument that the denial of their motion to reopen the trial was reversible error, the respondent argues in its brief that the trial court, by its order dated December 1, 1986, had admitted the U.S.G.S. stream flow records which the appellants proposed offering in evidence if the

trial were reopened. The respondents ignore the difference between the U.S.G.S. tabulations which were attached to the appellants' reply trial brief and the evidence of daily stream flows of the Logan River which had become available on October 1, 1986, and also testimony of an expert witness as to the significance of such daily discharge records. In the letter dated October 1, 1986, (R. 78,79), it was stated that a supplement to appellants' reply memorandum would be filed.

The court admitted in evidence, "ab initio" to the time they were submitted by the appellants, the mean monthly and yearly Logan River flows. (R. 85)

It is stated in the respondent's brief on pages 12 and 13 that the years when water measurements showed less than 248 cfs at the Utah Power & Light Co. gaging station on Logan River were: 1915 (188 cfs), 1919 (231 cfs), 1924 (236 cfs), 1925 (237 cfs), 1926 (188 cfs), 1930 (201 cfs), 1933 (236 cfs), 1934 (126 cfs), 1935 (195 cfs), 1937 (228 cfs), 1939 (189 cfs). Reference is made to pages 10, 11, and 12 of the record.

The flow figure of 248 cfs has no significance as Schedule "A" attached hereto shows that all of the water of the river is divided among the holders of 1860 priority rights. No water would be available for Blacksmith Fork's 1877 right. The law is well settled not only in Utah, but in all of the Western states, that under the "appropriation doctrine", when a river flow recedes during the summer, the diversion rights of the

appropriators are cut off on the basis of first in time shall be first in right. It is so provided in Section 73-3-1, UCA:

"....The appropriation must be for some useful and beneficial purpose, and, as between appropriators, the one first in time shall be first in rights...."

The early history of our water laws is discussed in Little Cottonwood Water Company v. Kimball (1930) 76 Utah 243, 289 P. 116; Moyle v. Salt Lake City (1947) 111 Utah 201, 176 P2d 882; and Wrathall v. Johnson (1935), 86 Utah 50, 40 P2d 755.

These cases recognize the basis of the law that first in time is first in right and that the earlier priority right must be fully satisfied before any water is available for a later right. The law is effectually carried out by the provision of the Kimball decree quoted above and by Schedule "A" attached, which definitely denies any water for the 1877 priority of Blacksmith Fork when the flow of the Logan River fails to satisfy the 1860 priorities.

The uncontradicted testimony of Harvard Hanson, Roy Olsen, and others that tight dams had for more than 50 years diverted water into the College and Spring Creek Canals effectually shifted the burden of proof to Blacksmith Fork to prove that it did not need the low flow water and no evidence was introduced by Blacksmith Fork to meet its burden.

These water measurements, given on page 12 of the respondent's brief, as stated on the U.S.G.S. tabulation, are mean yearly flows and not daily discharge records. These are the

tabulations the court took judicial notice of, and, as stated in the appellants' reply memorandum, page 4, they are yearly mean discharge records. They show generally the greatly reduced mean flows in July, August, and September of each year, but do not show the daily flow records which determined when Schedule A from the Kimball decree required shutting off all rights with priorities later than 1860.

It is stated in respondent's brief, on page 29:

"A portion of the evidence Appellants proposed to put on at a reopening of the trial was accepted and considered by the Court prior to the Court making its decision. The remaining evidence the appellants proposed to put on was available to Appellants with reasonable diligence before the trial of the case."

As explained above, the evidence which the Court took judicial notice of consisted of monthly and yearly mean discharge records and what the Appellants proposed to introduce were daily stream flow records which would indicate the day in each year when the Blacksmith Fork water right, with an 1877 priority, was cut off as provided by the Kimball decree.

Based on the foregoing, it is apparent that the respondent had the mistaken idea that in order to prevail, the appellants had the burden of proving that throughout each year for seven consecutive years, the appellants, College and Spring Creek, were diverting by means of their tight dams water to which Blacksmith Fork was entitled. Not so. The appellants are seeking, by adverse use, only the right to divert water when the flow of the

Blacksmith Fork River is so low in the late summer that water will not run by gravity into their respective irrigation systems.

This cannot be proved or disproved by quoting mean yearly flows. After the six year delay in getting the respondent's brief, the court rushed to a decision while the appellants were seeking to get daily discharge records of the Logan River which would establish for each year the cut-off date of the Blacksmith Fork Logan River right, and which would definitely establish when Blacksmith Fork needed the Blacksmith Fork River water at the times when the adverse use took place.

The following rule is applicable:

"It is error to refuse to reopen a case where the granting of the motion will cause no delay and the proffered testimony supplies omitted evidence which is clearly necessary to the due administration of justice." 89 C.J.S. p. 379.

In the case of Stinson v. King (Texas) 83 SW2d 398, the (1935) court states:

"The request (to reopen) was a reasonable one, the granting of it by the trial court would have caused no delay, and the proffered testimony evidently supplied an omission which clearly appears necessary to the due administration of justice." (Parenthetical statement added.)

In the present case the daily discharge records became available the day before the court signed its memorandum decision, and evidence of the daily discharge of the Logan River would have shown the need for water by Blacksmith Fork during the adverse use period from 1931 to 1939 contrary to the court's findings.

The trial court refused to look at the facts when they became available in October, 1986. (R. 78,79) The court clearly disregarded the rule of the case of Wasatch Oil Refining Co. v. Wade, (Utah) 63 P2d 1070 (1936), that:

"A motion to reopen a case for the purpose of introducing further evidence is addressed to the sound discretion of the court which will be liberally exercised to in behalf of allowing the whole case to be presented...." (Emphasis added)

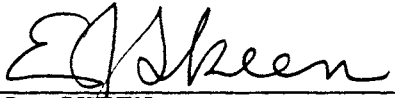
It was error to refuse to reopen the case to receive in evidence the daily discharge records.

CONCLUSION

The new matters introduced in the respondent's brief on appeal are without merit. The judgment of the trial court should be reversed with directions to reopen the trial for the purpose of admitting evidence relating to the daily discharge of the Logan River during the prescriptive period and for a new trial of all issues in the three separate cases.

Respectfully submitted,

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DATE OF PRIORITY	AMOUNT IN SECOND FEET	POINT OF DIVERSION AND PLACE OF USE
192c. <i>A. J. Reese,</i> 1880—May 1	3.0 c.f.s.	Said water to be diverted from Hopkins Slough through a canal commonly known as West Bench Canal, or by means of an electrically driven pump situated near the center of the Southeast quarter of Section 1, Township 12 North, Range 1 West and used for the irrigation of 200 acres of land in the Southeast quarter of Section 1, Township 12 North, Range 1 West, and the Southwest quarter of Section 6, Township 12 North, Range 1 East.

SWIFT SPRING AND SLOUGH

193. <i>Thomas Smart,</i>		Said water to be diverted from Swift Spring and Slough, which arises from numerous springs and seeps in Sections 29 and 32, Township 12 North, Range 1 East, Salt Lake Meridian, and used for the irrigation of 1603 acres of land in Sections 29, 32, 30 and 19, Township 12 North, Range 1 West, and Sections 23 and 24, Township 12 North, Range 1 West, Salt Lake Meridian, said water to be divided among said claimants in proportion to the acreage owned by each individual, viz., Thomas Smart 180 acres; Hyrum J. DeWitt 200 acres; Joseph Kent 60 acres; Isaac P. Stewart 53 acres; Thomas Irvine 125 acres; Harry Worley 120 acres; William Baugh and Joseph Baugh 47 acres; Oscar Johnson 90 acres; Ezra Ricks 40 acres; Hugh Dowdell 100 acres; Joseph E. Cowley, Jr. 54 acres; Frank Cowley and Ernest Cowley 106 acres, Joseph E. Cowley 10 acres; Mrs. Jane Doe Partington 10 acres; John C. Larsen 10 acres; Cliff Goodwin 40 acres; John M. Berry 35 acres; F. A. Benson 75 acres; Joseph R. Hebaus 175 acres; J. Z. Stewart 78 acres.
194. <i>Hyrum J. DeWitt,</i>		
195. <i>Joseph Kent,</i>		
196. <i>Isaac P. Stewart,</i>		
197. <i>Thomas Irvine,</i>		
198. <i>Harry Worley,</i>		
199. <i>William Baugh,</i>		
200. <i>Joseph Baugh,</i>		
201. <i>Oscar Johnson,</i>		
202. <i>Ezra Ricks,</i>		
203. <i>Hugh Dowdell,</i>		
204. <i>Joseph E. Cowley, Jr.,</i>		
205. <i>Frank Cowley,</i>		
206. <i>Ernest Cowley,</i>		
207. <i>Joseph E. Cowley,</i>		
208. <i>Mrs. Jane Doe Partington,</i>		
209. <i>John C. Larsen,</i>		
210. <i>Cliff Goodwin,</i>		
211. <i>John M. Berry,</i>		
212. <i>F. A. Benson,</i>		
213. <i>Joseph R. Hebaus,</i>		
214. <i>J. Z. Stewart,</i> 1860—May 1	20 c.f.s.	

LOGAN RIVER

215. <i>Mary J. Pedersen,</i> (a) 1895—May 1	1.0 c.f.s.	Said water to be diverted from Logan River at a point 750 feet East and 1200 feet South of the Northwest corner of Section 28, Township 12 North, Range 2 East, and used for the irrigation of 17 acres of land in Sections 28 and 29, said township and range.
(b) 1895—May 1	6.0 c.f.s.	Said water to be diverted from Logan River at the point of diversion described in paragraph (a) immediately above and used for power purposes and returned to the channel of the river at a point 200 feet East and 1500 feet South of the Northwest corner of Section 28, Township 12 North, Range 2 East, S. L. M.
216. <i>Logan, Hyde Park & Smithfield Canal:</i> (a) 1860—May 1	60 c.f.s.	Said water to be diverted from said Logan River throughout the irrigation season of each year through a canal diverting therefrom at a point 328 feet South and 702 feet West from the Northeast corner of Section 31, Township 12 North, Range 2 East,

DATE OF PRIORITY	AMOUNT IN SECOND FEET	POINT OF DIVERSION AND PLACE OF USE
		and used for the irrigation of 3600 acres of land in Sections 2, 11, 13, 14, 23, 24, 25, 26, 27, 34 and 35, Township 12 North, Range 1 East, Sections 14, 15, 16, 21, 22, 23, 26, 27, 28, 33, 34, 35, Township 13 North, Range 1 East.
(b) 1860—May 1	16 c.f.s.	Said water to be diverted from said Logan River through the above described canal during that part of each irrigation season prior to August 1st of each year for the irrigation of 800 acres of land in the afore-said Sections.
(c) 1860—May 1	27.2 c.f.s.	Said water to be diverted from said Logan River through the said canal during that part of the irrigation season prior to July 15th of each year for the supplemental irrigation of the above mentioned land.
(d) 1860—May 1	20.0 c.f.s.	To be diverted from said Logan River through the said canal between October 1st and October 10th only inclusive of each year for the final irrigation of sugar beets.
217. <i>Thomas Smart,</i> 1900—May 1	4.0 c.f.s.	Said water to be diverted from said Logan River through the flume of Utah Power & Light Co. diverting therefrom at a point North 37° 20' West 465 feet from the South quarter corner of Section 29 Township 12 North, Range 2 East, and from said flume just above pressure box, and used for the irrigation of 300 acres of land in Section 35, Township 12 North, Range 1 East, S. L. M., and Section 2, Township 11 North, Range 1 East.
218. <i>Utah Agricultural College of the State of Utah:</i>		
(a) 1908—June 11	150 c.f.s.	Said water to be diverted from said Logan River at a point South 33° 29' East 1657 feet from the Northwest corner of Section 36, Township 12 North, Range 1 East, and used for the generation of electric power or energy in the power house located in the dam, and returned to Logan River at a point South 33° 29' East 1657 feet from the Northwest corner of said Section 36.
(b) 1919—Feb. 19	84 ac. ft.	Said water to be stored, impounded and withdrawn at will in the reservoir located immediately above and adjacent to the power house above mentioned and used for the generation of power thereat, so long as the same shall not unreasonably fluctuate the water surface of said stream, provided that said use is subject to the terms of that certain agreement heretofore entered into by and between Utah Agricultural College and Logan River Water Users Association in words and figures following to-wit:

AGREEMENT

The Thatcher Milling and Elevator Company, a corporation, Hyde Park Irrigation Company, a corporation, Logan North Field Irrigation Company, a corporation, Logan Northwest Field Irrigation Company, a corporation, Benson Irrigation Company, a corporation, Logan Island Irrigation Company, a corporation, Providence Logan Irrigation Company, a corporation, Providence Pioneer Irrigation Company, a corporation, Logan Hollow Canal Company, a corporation, Seventh Ward Irrigation Company, a corporation, Anderson and Sons Company, a corporation, Central Milling and Elevator Company, a corporation, Logan Stone and Monument Company, a corporation, William Affleck, and E. Sumner Hatch, (hereinafter referred to as the "Association"), parties of the first part hereto, and the Board of Trustees of the Agricultural College of Utah, (hereinafter referred to as the "Trustees") party of the second part hereto, agree as follows:

THAT WHEREAS, the State of Utah now owns, maintains and operates a certain dam, power plant and reservoir in Logan River, at or near the mouth of Logan Canyon, Cache County, Utah, which said reservoir occasioned the loss of waters to the first parties hereto through percolation and seepage and

WHEREAS, it was mutually agreed by the parties hereto that certain tests should be made to ascertain just what caused such seepage and loss of water, and if possible remove the same, and

WHEREAS, certain tests have been made and the results thereof clearly demonstrated that under certain conditions there is a loss of water, but that by adhering to the herein specified regulations as to depth of water maintained in said reservoir this loss can be avoided, and

WHEREAS, it is desired by the parties to this agreement that rules may be laid down for the future operation of said reservoir so that no hardships will be worked thereby on either of the parties hereto.

NOW THEREFORE, in consideration of the mutual covenants and agreement of the parties hereto to be kept and performed, it is agreed

1st. That the elevations, stations and points mentioned in this agreement are those used and arrived at through tests and experiments made pursuant to agreement heretofore made between the parties hereto by Messrs. W. D. Beers, State Engineer, Ray B. West, Engineer on the part of the Trustees, and Eugene Schaub, Engineer on the part of the Association, and submitted in report furnished to the parties hereto under date of February 13th, 1917, which said report is made a part of this agreement, and for the purposes of this agreement, are hereby accepted as standard, and that the necessary devices and property used in arriving at the decision embodied in said report shall remain in places now installed for the benefit of the parties hereto without expense to the second party.

2nd. That the Trustees be and they are hereby allowed to operate the power plant hereinbefore referred to and to maintain the water in the reservoir at an elevation of 105.63 feet at all times of the year, except during the irrigation season when the flow of Logan River measured at D D D, viz: D the river station below the Logan and Northern Canal and D the station on the Logan and Northern Canal is less than 205.56 cubic feet per second; that during this season the surface of the water in said reservoir shall be lowered to an elevation of 102.95 feet. The Trustees agree to lower the water when this stage is reached upon notification from the Logan River distribution agent.

3rd. That the Trustees be allowed to make up losses of the day by night conservations of water in the reservoir, subject, however, to all prior existing rights to said water.

4th. That the Trustees maintain the rheostat and motor operated waste gates at the dam in good workable order, so that fluctuation may be controlled as far as possible.

5th. That the Thatcher Milling and Elevator Company, a corporation, one of the members of the Association, or first party hereto, will maintain an automatic gauge, properly rated at the head of their canal all the year round and the State will maintain one on the reservoir at all times, and that copies of the two gauge records will be exchanged, and that in consideration of the full compliance with the terms of this agreement and the faithful adherence to the rules herein laid down, the said Trustees and the State of Utah are hereby released and held harmless from all claims and damages accruing through loss of water resulting from the use, operation and maintenance of the reservoir herein referred to.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate this 5th day of March, 1917.

LOGAN RIVER WATER USERS ASSOCIATION.

By D. H. THOMAS,

W. E. NYMAN,

JAMES McNEIL.

BOARD OF TRUSTEES OF THE AGRICULTURAL COLLEGE

By ANGUS T. WRIGHT,

JOHN Q. ADAMS.

DATE OF PRIORITY	AMOUNT IN SECOND FEET	POINT OF DIVERSION AND PLACE OF USE
219. <i>Logan & Northern Irrigation Co.</i>		
(a) 1860—May 1	68.1 c.f.s.	Said water to be diverted from said Logan River throughout the irrigation season of each year through a ditch diverting therefrom at a point 1525 feet South and 825 feet East from the Northeast corner of Section 35, Township 12 North, Range 1 East, and used for the irrigation of 3600 acres of land in Sections 3, 4, 10, 11, 14, 15, 22, 23, 26, 27, 34, 35, Township 12 North, Range 1 East, and Sections 9, 15, 16, 17, 20, 21, 22, 27, 28, 33, 34, Township 13 North, Range 1 East.
(b) 1860—May 1	7.9 c.f.s.	Said water to be diverted from said Logan River through the said canal during that part of each irrigation season prior to August 1st of each year for the irrigation of 400 acres of land in the above mentioned sections.
(c) 1860—May 1	27.2 c.f.s.	Said water to be diverted from said Logan River through the said canal during that part of the irrigation season prior to July 15th of each year for the supplemental irrigation of the above mentioned land.
(d) 1860—May 1	20.0 c.f.s.	Said water to be diverted from said Logan River through the said canal only between October 1st and October 10th inclusive of each year for the final irrigation of sugar beets.
220. <i>Providence-Logan Canal:</i>		
(a) 1860—May 1	9.6 c.f.s.	Said water to be diverted from said Logan River throughout the irrigation season of each year through a ditch diverting therefrom at a point 1400 feet South and 1168 feet West from the Northeast corner of Section 35, Township 12 North, Range 1 East, and used for the irrigation of 400 acres of land in Sections 34 and 35, Township 12 North, Range 1 East, Sections 2, 3 and 10, Township 11 North, Range 1 East.
(b) 1860—May 1	1.2 c.f.s.	Said water to be diverted from said Logan River through the aforesaid canal during that part of each irrigation season prior to August 1st of each year for the irrigation of 80 acres of land in the above mentioned sections.
(c) 1860—May 1	3.9 c.f.s.	Said water to be diverted from said Logan River through the said canal during that part of the irrigation season prior to July 15th of each year for the supplemental irrigation of the above mentioned land.
(d) 1860—May 1	3.0 c.f.s.	Said water to be diverted from said Logan River through the said canal only between October 1st and October 10th inclusive of each year for the final irrigation of sugar beets.
221. <i>Providence-Pioneer Canal:</i>		
(a) 1860—May 1	3.9 c.f.s.	Said water to be diverted from said Logan River throughout the irrigation season of

DATE OF PRIORITY	AMOUNT IN SECOND FEET	POINT OF DIVERSION AND PLACE OF USE
		each year through a ditch diverting therefrom at a point 1316 feet South and 2178 feet West from the Northeast corner of Section 3, Township 11 North, Range 1 East, and used for the irrigation of 255 acres of land in Sections 3, 4, 9 and 10, Township 11 North, Range 1 East.
(b) 1860—May 1	0.5 c.f.s.	Said water to be diverted from said Logan River during that part of each irrigation season prior to August 1st of each year through the aforesaid canal for the irrigation of 40 acres of land in the above mentioned sections.
(c) 1860—May 1	1.6 c.f.s.	Said water to be diverted from said Logan River through the said canal during that part of the irrigation season prior to July 15th of each year for the supplemental irrigation of the land above mentioned.
(d) 1860—May 1	2.0 c.f.s.	Said water to be diverted from said Logan River through the said canal only between October 1st and October 10th inclusive of each year for the final irrigation of sugar beets.
222. <i>Hyde Park Irrigation Co. and Logan North Field Irrigation Co.</i>		
(a) 1860—May 1	38.5 c.f.s.	Said water to be diverted from said Logan River throughout the irrigation season of each year through a ditch diverting therefrom at a point 2146 feet North and 1263 feet East from the Northeast corner, Section 3, Township 11 North, Range 1 East, and used for the irrigation of 2800 acres of land in Sections 33, 34, 27, 28, 21, 22, 15, 16, 17, 5, 8, 9, 10, 3 and 4, Township 12 North, Range 1 East.
(b) 1860—May 1	2.1 c.f.s.	Said water to be diverted from said Logan River during that part of the irrigation season prior to August 1st of each year through the aforesaid canal for the irrigation of 100 acres of land in the above mentioned sections.
(c) 1860—May 1	4.8 c.f.s.	Said water to be diverted from said Logan River through the said canal during that part of the irrigation season prior to July 15th of each year for the supplemental irrigation of the above mentioned land.
(d) 1860—May 1	12.0 c.f.s.	Said water to be diverted from said Logan River through the said canal only between October 1st and October 10th inclusive of each year for the final irrigation of sugar beets.
223. <i>Logan Northwest Field Irrigation Co. and Benson Irrigation Co.</i>		
1860—May 1	48 c.f.s.	Said water to be diverted from said Logan River throughout the irrigation season of each year through a ditch diverting therefrom at a point 2146 feet North and 1263 feet East from the Northeast corner, Section 3, Township 11 North, Range 1 East, and used for the irrigation of 4800 acres of land in Sections 3, 4, 5, Township 11

DATE OF PRIORITY	AMOUNT IN SECOND FEET	POINT OF DIVERSION AND PLACE OF USE
		North, Range 1 East, Sections 32, 33, 28, 29, 20, 21, 16, 17, 18, 7, 8, 5, 6, Township 12 North, Range 1 East, Section 3, 10, 11, 12, 13, 14, 15, 23, Township 12 North, Range 1 West.
224. <i>Logan Hollow Canal Co.</i>		
(a) 1860—May 1	1.7 c.f.s.	Said water to be diverted from said Logan River throughout the irrigation season of each year through a ditch diverting therefrom at a point 1384 feet South and 782 feet West from the Northeast corner Section 35, Township 12 North, Range 1 East, and used for the irrigation of 90 acres of land in Section 34, 35, Township 12 North, Range 1 East.
(b) 1860—May 1	0.2 c.f.s.	Said water to be diverted from said Logan River through the said canal during that part of each irrigation season prior to August 1st of each year for the supplemental irrigation of the above mentioned land.
(c) 1860—May 1	0.6 c.f.s.	Said water to be diverted from said Logan River through the said canal during that part of the irrigation season prior to July 15th of each year for the supplemental irrigation of the above mentioned land.
225. <i>Logan Island Irr. Company</i>		
(a) 1860—May 1	5.9 c.f.s.	Said water to be diverted from said Logan River through a ditch diverting therefrom at a point 2146 feet North and 1263 feet East from the Northeast corner, Section 3, Township 11 North, Range 1 East, and used for the irrigation of 356 acres of land in Sections 34 and 35, Township 12 North, Range 1 East, Sections 3 and 4, Township 11 North, Range 1 East.
(b) 1860—May 1	0.7 c.f.s.	Said water to be diverted from said Logan River through the said canal during that part of the irrigation season prior to August 1st of each year for the supplemental irrigation of the above mentioned land.
(c) 1860—May 1	2.3 c.f.s.	Said water to be diverted from said Logan River through the said canal during that part of the irrigation season of each year prior to July 15th for the supplemental irrigation of the above mentioned land.
(d) 1860—May 1	9.0 c.f.s.	Said water to be diverted from the tailrace of the Logan Stone & Monument Company at a point 4910 feet West and 2.8 feet North of the Northeast corner of Section 3, Township 11 North, Range 1 East, S. L. M., and used for the supplemental irrigation of the lands above described.
(e) 1860—May 1	1.2 c.f.s.	Said water to be diverted at the point last above described during that part of the irrigation season prior to August 1st of each year for the supplemental irrigation of the above mentioned lands.
(f) 1860—May 1	2.0 c.f.s.	Said water to be diverted at the point last above described during that part of the

DATE OF PRIORITY	AMOUNT IN SECOND FEET	POINT OF DIVERSION AND PLACE OF USE
		irrigation season prior to July 15th of each year for the supplemental irrigation of the above mentioned lands.
226. <i>Seventh Ward Irrigation Co.</i>		
(a) 1860—May 1	1.7 c.f.s.	Said water to be diverted from said Logan River through a ditch diverting therefrom at a point 2146 feet North and 1263 feet East from the Northeast corner Township 11 North, Range 1 East, and used for the irrigation of 60 acres of land in Sections 3 and 4, Township 11 North, Range 1 East, Section 34, Township 12 North, Range 1 East.
(b) 1860—May 1	0.3 c.f.s.	Said water to be diverted from said Logan River through the said canaal during that part of the irrigation season prior to July 15th of each year for the supplemental irrigation of the above mentioned land.
227. <i>Thatcher Irrigation Company</i> , an unincorporated association composed of Anthon Anderson, Clara B. Smith, Grace Price, H. E. Hatch, Georgia T. Hatch, R. A. Hatch, Abbie B. Thatcher, Carrie B. Price, L. F. Smith, Lester Worley, Geo. Worley, A. Walton, W. C. England, Ellen M. Peterson, Jesse Mayne, Roy Bullen, Brigham Parry, Anderson & Sons Company, a corporation, Bernard Parry, A. E. Anderson, Brigham Young College, a corporation, John Naf, E. N. Hammond, Alley T. Clayton, L. P. Watkins, W. W. Hall, W. E. Mit-ten, M. J. Watkins, Thomas Howells, William Athay, Jane A. Thatcher, H. J. Hatch, James H. Allen, Mrs. Asa Bullen, F. A. Hinckley, Abe Tyson, A. J. Hawkes, William Worley, C. H. Wakley and Harriet L. Benson.		
(a) 1860—May 1	0.6 c.f.s.	Said water to be diverted from said Logan River through a ditch diverting therefrom at a point 2146 feet North and 1263 feet East from the Northeast corner, Section 3, Township 11 North, Range 1 East, for the irrigation of 126 acres of land in Plat "B", Logan City Survey.
(b) 1860—May 1	0.2 c.f.s.	Said water to be diverted from said Logan River through the said ditch during that part of each irrigation season prior to July 15th of each year for the supplemental irrigation of the above mentioned land.
228. <i>Thatcher Milling & Elevator Co.</i>		
1860—May 1	87.0 c.f.s.	Said water to be diverted from said Logan River at a point 2146 feet North and 1263 feet East from the Northeast corner, Section 3, Township 11 North, Range 1 East and used for the generation of power at the Thatcher Mill and thence returned to Little Logan River at a point 148 feet South and 6250 feet West from the Northeast corner of Section 3, Township 11 North, Range 1 East.
229. <i>Anderson & Sons Company</i> ,		
1860—May 1	18.3 c.f.s.	Said water to be diverted from said Logan River at a point 2146 feet North and 1263 feet East from the Northeast corner, Section 3, Township 11 North, Range 1 East, and used for the generation of power at the defendant's mill, thence returned to Little Logan River at a point 1950 feet South and 8247 feet West from the Northeast corner of Section 3.

DATE OF PRIORITY	AMOUNT IN SECOND FEET	POINT OF DIVERSION AND PLACE OF USE
230. <i>Central Milling & Elevator Co.</i> 1860—May 1	22.6 c.f.s.	Said water to be diverted from said Logan River at a point 2146 feet North and 1263 feet East from the Northeast corner of Section 3, Township 11 North Range 1 East and used for the generation of power at the defendant's mill, thence returned to Thatcher Mill Race at a point 327 feet North and 4684 feet West of the Northeast corner Section 3, Township 11 North, Range 1 East.
231. <i>Logan Stone & Monument Co.</i> (a) 1860—May 1	9.1 c.f.s.	Said water to be diverted from said Logan River at a point 2146 feet North and 1263 feet East from the Northeast corner, Section 3, Township 11 North Range 1 East, and used for the generation of power at the mill of the said defendant, and thence returned to Little Logan River at a point 2.8 feet North and 4910 feet West from the Northeast corner said Section 3.
(b) 1860—May 1	3.0 c.f.s.	Said water to be diverted from said Logan River through the last above described canal and used from Sept. 16th to June 30th of each succeeding year for manufacturing purposes at the mill of the said defendant, and thence returned to Little Logan River at the point of return last above described.
232. <i>Thatcher Milling & Elevator Co. (substituted for H. Sumner Hatch.)</i> 1860—May 1	39.8 c.f.s.	Said water to be diverted from said Logan River at a point 2146 feet North and 1263 feet East from the Northeast corner of Section 3, Township 11 North, Range 1 East, and used for power purposes at the Deseret Mill, thence returned to Thatcher Millrace at a point 399 feet North and 4315 feet West from the Northeast corner of Section 3.
233. <i>Utah Power & Light Co.</i> (a) 1860—May 1	20.66 c.f.s.	Said water to be diverted from said Logan River at a point 2146 feet North and 1263 feet East of the Northeast corner of Section 3, Township 11 North, Range 1 East, S. L. M., used for power purposes and returned to the channel of Little Logan River above the point of diversion of the Logan Southwest Field Canal.
(b) 1893—July 1 1900—May 31	100 c.f.s. 100 c.f.s.	Said water to be diverted from said Logan River at a point North 37° 20' West 465 feet from the quarter corner on the South boundary line of Section 28, Township 12 North, Range 2 East, S. L. M., used for the generation of electrical power at its Logan Power Plant, and thence returned to the channel of said Logan River at a point South 58° 25' East 274 feet from the quarter corner on the South boundary line of Section 25, Township 12 North, Range 1 East S. L. M.
(c) 1921—March 29	125 c.f.s.	Said water to be diverted from said Logan River at the point of diversion above described in paragraph (b), used for the gen-

DATE OF PRIORITY	AMOUNT IN SECOND FEET	POINT OF DIVERSION AND PLACE OF USE
		eration of electrical power and energy at its Logan Power Plant, and returned to the channel of said Logan River at the point of return described in the above paragraph (b); provided, however, that the priority and amount of this appropriation is conditioned upon a compliance with the terms of the application upon which said appropriation is based, to-wit: Application File No. 8025, filed in the office of the State Engineer of the State of Utah, and the same is subject to the provisions of the law of said state governing the issuance of water certificates by the State Engineer of said State of Utah.
234. <i>Logan City:</i> 1860—May 1	10 c.f.s.	Said water to be diverted from Logan River at a point 725 feet North and 598 feet East from the quarter-corner on the South boundary line of Section 22, Township 12 North, Range 2 East, and used for domestic and municipal purposes within the city limits of Logan City, Cache County, Utah.

When the total flow of Logan River, which shall be the sum of the flow as measured at the gauging station on Logan River opposite Utah Power & Light Company's plant, plus the flow in said Power Company's tailrace, plus the quantity being simultaneously diverted by the Logan, Hyde Park & Smithfield Canal, Thomas Smart Canal and Logan City, shall be less than is required to satisfy the rights of Logan River appropriators hereinbefore specified, the water shall be prorated and distributed among these parties according to the following schedule "A" viz:

riortors	120	130	140	150	160	170	180	190	200	210	220	230	240	250	260	263	264	265	266	267	270	280	290	300	310	320	330	340	350	360	370	380	390	400
Hyde Park & Eldon mart	21.6	23.4	25.2	27.0	28.8	30.6	32.4	34.2	36.0	37.8	39.6	40.2	42.4	44.6	46.8	47.4	47.4	17.4	47.4	47.4	48.3	51.2	54.0	60.0	65.9	72.2	76.0	79.7	83.5	87.3	91.1	95.1	99.1	103.2
& Northern																1.0		2.0	3.0	4.0	4.0	4.0	4.0	4.0	4.0	4.0	4.0	4.0	4.0	4.0	4.0	4.0	4.0	
nice-Logan	27.6	29.9	32.2	34.5	36.8	39.1	41.4	43.7	46.0	48.3	50.6	52.9	55.2	57.5	59.8	60.5	60.5	60.5	60.5	60.5	61.2	63.5	65.8	68.1	70.4	72.3	76.0	79.7	83.5	87.3	91.1	95.1	99.1	103.2
nice Pioneer	3.9	4.2	4.6	4.9	5.2	5.5	5.9	6.2	6.5	6.8	7.2	7.5	7.8	8.1	8.5	8.6	8.6	8.6	8.6	8.6	8.7	9.0	9.3	9.6	10.0	10.3	10.8	11.4	11.9	12.4	13.0	13.5	14.1	14.7
	1.6	1.7	1.8	2.0	2.1	2.2	2.4	2.5	2.6	2.8	2.9	3.0	3.2	3.3	3.4	3.5	3.5	3.5	3.5	3.5	3.5	3.6	3.8	3.9	4.0	4.2	4.4	4.6	4.8	5.0	5.3	5.5	5.7	6.0
ark Irr. Co. orthfield	16.5	17.9	19.3	20.7	22.1	23.4	24.8	26.2	27.6	29.0	30.3	31.7	33.1	34.5	35.9	36.2	36.2	36.2	36.2	36.2	36.5	37.2	37.9	38.5	39.2	39.9	40.6	41.3	42.0	43.7	44.3	44.7	45.4	
Northwest r. Co., Irr. Co.,	20.1	21.8	23.5	25.2	26.8	28.5	30.2	31.9	33.5	35.2	36.9	38.6	40.3	41.9	43.6	44.1	44.1	44.1	44.1	44.1	44.6	46.3	48.0	48.0	48.0	48.0	48.0	48.0	48.0	48.0	48.0	48.0	48.0	48.0
Iollow	0.7	0.7	0.8	0.8	0.9	1.0	1.0	1.1	1.1	1.2	1.3	1.3	1.4	1.4	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.6	1.6	1.7	1.7	1.8	1.9	2.0	2.1	2.2	2.3	2.4	2.5	2.5
sland Irr.,	2.4	2.6	2.8	3.0	3.2	3.4	3.6	3.8	4.0	4.2	4.4	4.6	4.8	5.0	5.2	5.2	5.2	5.2	5.2	5.2	5.3	5.5	5.7	5.9	6.1	6.3	6.6	6.9	7.2	7.6	7.9	8.2	8.6	9.0
	3.6	4.0	4.3	4.6	4.9	5.2	5.5	5.8	6.1	6.4	6.7	7.0	7.3	7.6	7.9	8.1	8.1	8.1	8.1	8.1	8.1	8.4	8.7	9.0	9.3	9.7	10.2	10.7	11.2	11.7	12.2	12.2	12.2	12.2
Ward Irr.,	0.7	0.8	0.8	0.9	0.9	1.0	1.0	1.1	1.2	1.2	1.3	1.3	1.4	1.4	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.6	1.7	1.7	1.7	1.9	1.9	2.0	2.0	2.0	2.0	2.0	2.0	2.0
r Irr., Co.,	0.2	0.2	0.3	0.3	0.3	0.3	0.3	0.4	0.4	0.4	0.4	0.4	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.6	0.6	0.6	0.6	0.6	0.6	0.7	0.7	0.7	0.7	0.8	0.8
Nity.	4.6	5.0	5.4	5.7	6.1	6.5	6.9	7.3	7.7	8.0	8.4	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0
Stone & Kent Co.,	3.7	4.0	4.3	4.6	4.9	5.2	5.5	5.8	6.1	6.4	6.7	7.0	7.3	7.6	8.0	8.0	8.0	8.0	8.0	8.0	8.1	8.5	8.7	9.1	9.4	9.7	10.2	10.7	11.2	11.7	12.2	12.2	12.2	12.2
r Milling & r Co.,	36.5	39.5	42.5	45.5	48.7	51.7	54.7	57.7	60.8	63.9	66.9	69.9	72.9	76.0	79.0	80.0	80.0	80.0	80.0	80.0	80.8	83.9	87.0	87.0	87.0	87.0	87.0	87.0	87.0	87.0	87.0	87.0	87.0	87.0
Milling & r Co.,	11.9	13.0	13.9	14.8	15.9	16.8	17.8	18.8	19.8	20.7	21.8	22.6	22.6	22.6	22.6	22.6	22.6	22.6	22.6	22.6	22.6	22.6	22.6	22.6	22.6	22.6	22.6	22.6	22.6	22.6	22.6	22.6	22.6	22.6
r M. & E. Co.	20.9	22.7	24.4	26.2	27.9	29.6	31.4	33.2	34.8	36.6	38.3	39.9	33.9	39.9	39.9	39.9	39.9	39.9	39.9	39.9	39.9	39.9	39.9	39.9	39.8	39.8	39.8	39.8	39.8	39.8	39.8	39.8	39.8	39.8
n & Sons	7.7	8.3	9.0	9.6	10.2	10.9	11.5	12.2	12.8	13.4	14.1	14.7	15.4	16.0	16.6	16.8	16.8	16.8	16.8	16.8	16.8	17.0	17.7	18.3	18.3	18.3	18.3	18.3	18.3	18.3	18.3	18.3	18.3	18.3
ower & Light rd Right]	9.4	10.2	11.0	11.8	12.6	13.3	14.1	15.0	15.7	16.5	17.2	18.0	18.9	19.6	20.4	20.7	20.7	20.7	20.7	20.7	20.9	21.8	22.6	22.6	22.6	22.6	22.6	22.6	22.6	22.6	22.6	22.6	22.6	22.6
ower & Light	93.8	101.6	109.4	117.2	125.6	132.9	140.7	148.5	156.3	164.1	171.9	179.8	187.6	195.4	200.	200.	200.	200.	200.	200.	200.	200.	200.	200.	200.	200.	200.	200.	200.	200.	200.	200.	200.	200.

CERTIFICATE OF MAILING

STATE OF UTAH)
) ss.:
County of Salt Lake)

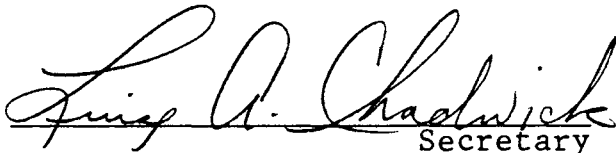
I, Luise A. Chadwick, hereby certify that I am an employee of the law firm of VANCOTT, BAGLEY, CORNWALL & McCARTHY, over the age of 18, that I am not a party to the above-captioned proceeding, and that I caused four true and correct copies of the Reply Brief of Appellants to be mailed, postage prepaid, this 14th day of September, 1987, to the following:

L. Brent Hoggan
OLSON & HOGGAN
56 West Center
Logan, Utah 84321

Attorneys for Respondent

Dallin W. Jensen
Solicitor General, State of Utah
1636 West North Temple
Salt Lake City, Utah 84116

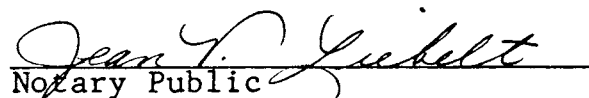
Attorney for the State Engineer


Secretary

SUBSCRIBED AND SWORN to before me this 14th day of September, 1987.

My Commission Expires:

Sept 2, 1988


Notary Public

Residing at Salt Lake County